

10-27-05

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Response to 7/25/05 office action for patent application #10/613,499, Hugh Herr

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10/28/2005 HLE333 00000022 10613499

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Lee Weinstein  
32A Fairmont St.  
Arlington, MA 02474  
E-mail: LeeWeinstein@comcast.net  
Phone: (781)643-3281  
Fax: (781)643-3282

October 25, 2005

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Re: Office action dated 7/25/05 regarding U.S. patent application number 10/613,499

Dear Sirs:

This letter is responsive to the office action dated 7/25/05 (copy attached) regarding U.S. patent application number 10/613,499.

In item 1, the examiner requests election of species from among 12 species the examiner has designated with letters A-L, linked with various drawings in the application. We elect to initially prosecute Species D (as designated by the examiner, associated with Figure 7). This election is made with traverse. Claims associated with Species D are claims 1, 3, and 9, so these are the claims we elect to prosecute first.

The examiner contends that "currently, no claim(s) is generic". It is possible that the examiner's impression stemmed from an unintentional inconsistency in wording between claim 1 and its dependent claims (claims 2-8). We have amended claims 1 and 7 to eliminate this inconsistent wording, and we now believe that both claims 1 and 9 are generic to all species the examiner has designated.

We have attached an amended set of claims. The status of the claims now stands as follows:

Claims 1 & 7 are currently amended

Claims 2-6 and 8-11 are original.

We have attached a copy of the above-referenced office action and a check in the amount of \$225 for an extension of time within the second month, with small entity status claimed.

Sincerely

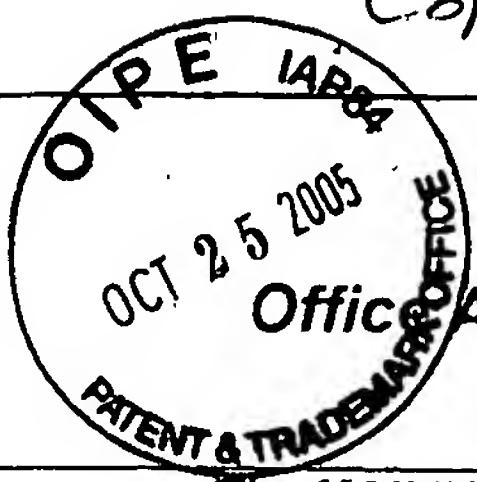
Lee Weinstein, Registration #56,261

Certificate of express mailing: I certify that this document including the attached amended claims, check for \$225, and copy of the related office action were deposited with the US Postal Service as Express Mail, post office to addressee, October 25, 2005, express mail label number ER720392027US.



Lee Weinstein

*Copy for filing with response*



**Office Action Summary**

7/25/05

	Application No.	Applicant(s)
	10/613,499	HERR, HUGH
Examiner	Art Unit	
Javier G. Blanco	3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 20 November 2003.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-11 are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species A: Figure 4

Species B: Figure 5

Species C: Figure 6

Species D: Figure 7

Species E: Figure 8

Species F: Figure 9

Species G: Figure 10

Species H: Figure 11

Species I: Figure 12

Species J: Figure 13

Species K: Figure 14

Species L: Figure 16

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim(s) is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable

thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javier G. Blanco whose telephone number is 571-272-4747. The examiner can normally be reached on M-F (7:30 a.m.-4:00 p.m.), first Friday of the bi-week off.

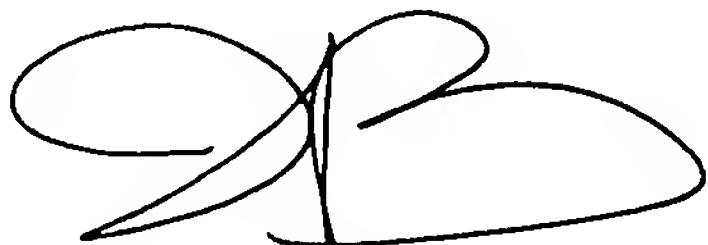
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone numbers for the organization where this application or proceeding is assigned is 703-872-9306 for regular communications and After Final communications. Any inquiry of a general nature or relating to

Application/Control Number: 10/613,499  
Art Unit: 3738

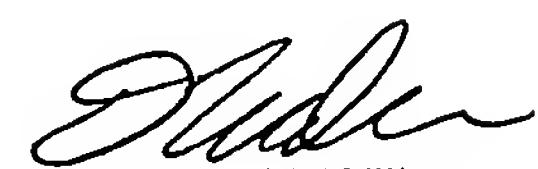
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the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

JGB



June 21, 2005



David H. Willse  
Primary Examiner